

REGULAR

NUMBER: 38.767

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTIONS 2, 7, 8, 38, and 54 OF CHAPTER 10, TITLE XI OF THE MILPITAS MUNICIPAL CODE.

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by Councilmember \_\_\_\_\_ and was adopted (Second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by Councilmember \_\_\_\_\_. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

**SECTION 1. Recitals and Findings.**

- A. Pursuant to Government Code section 65853 and 65854, the Planning Commission of the City of Milpitas held a properly noticed public hearing August 10, 2005 to consider the amendments to Title XI, Chapter 10 of the Milpitas Municipal Code. In accordance with Government Code section 65855, the Planning Commission has rendered a decision in the form of a written recommendation, which was presented to the City Council prior to consideration of this Ordinance.
- B. Upon receipt of the Planning Commission's written recommendation, the City Council held a properly noticed public hearing on January 17, 2006.
- C. The City Council finds that this Ordinance does not render Title XI, Chapter 10 inconsistent with the City of Milpitas General Plan.

**SECTION 2.** Section 38 of Title XI, Chapter 10 (Planning, Zoning and Annexation) of the Milpitas Municipal Code is hereby amended with the addition of the following new subsections:

**Section 38-"MXD" Mixed Use District**

**38.07-3** A minimum of one hundred (100)-square feet on the ground floor and sixty (60) square feet on the second level and above of "Usable Open Space" shall be provided for each dwelling unit.

**SECTION 3.** Sections 2, 7, 8, 38, and 54, of Title XI, Chapter 10 (Zoning, Planning and Annexation) of the Milpitas Municipal Code are amended as follows:

**Section 2 - Definitions**

**2.41-1.1 Gross Acreage**

The total area within the boundaries of a legal lot or parcel, including any area proposed to be dedicated or reserved for public right-of-way. Adjacent lands already dedicated for public right-of-way, including public roadways, easements or other areas, shall not be included as part of the gross acreage. (Ord. 38.759 (part), 4/2/02)

**Section 7 - "R3" Multi-Family High Density District**

**7.07.2 Landscape and Open Space Requirements**

An average of two hundred square feet of usable open space shall be provided for each dwelling unit. "Usable open space" shall mean any open space, the smallest dimension of which is at least 4 ½ feet and which is not used as storage or for movement of motor vehicles: except that yards abutting a public street, which are not adequately screened for privacy, in the opinion of the Planning Commission, shall not qualify as usable open space. Balconies, porches, or roof decks may be considered usable open space when

properly developed for work, play or outdoor living areas. At least thirty (30) percent of required open space shall be contiguous to and provide for private usable open space of the individual dwelling unit. (Ord. 38.57 (part), 6/18/64; Ord. 38 (part), 3/15/55)

#### **Section 8-“R4” Multi-Family Very High Density District**

##### **8.07-3 Park and Open Space Requirements for Residential Uses**

Balconies and porches located above ground level with a minimum dimension of 4½ feet constructed for use by dwelling units shall be exempt from the useable open space dimension standards above and within in Section 2, and may be considered to satisfy usable open space requirements. Each dwelling unit shall be provided with private open space as follows:

- a. Balconies and porches (above ground level: minimum sixty (60) square feet; or
- b. Patios (at ground level): minimum one hundred square feet (Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)

#### **Section 38 – “MXD” Mixed Use District**

##### **38.07-2 Park and Open Space Requirements for Residential Uses**

A minimum of twenty-five percent (25%) of the total site shall be usable open space or recreational facilities. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas.

**38.07-3** Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas. Balconies and porches located above ground level with a minimum dimension of 4½ feet constructed for use by dwelling units shall be exempt from the useable open space dimension standards above and within Section 2, and may be considered to satisfy usable open space requirements. Each dwelling unit shall be provided with private open space as follows:

- a. Balconies and porches (above ground level: minimum sixty (60) square feet; or
- b. Patios (at ground level): minimum one hundred square feet (Ord. 38.760 (3), 9/17/02; Ord. 38.759 (part), 4/2/02)

#### **Section 54 – General Provisions**

##### **54.20-Density Bonus for Affordable Housing Developments (entire section)**

**54.20-1 Purpose.** The Density Bonus regulations are intended to encourage the provision of affordable housing in the community by granting density bonuses and other incentives to developers of residential projects that construct or otherwise provide for housing units that will be available for purchase or rent by senior citizens and lower

income persons and households. The Density Bonus provisions are applicable in all zoning districts that allow residential development. This Ordinance is adopted in conformance with Chapter 4.3 of Title 7 of the Government Code, Section 65915, et seq.

**54.20-2 Density Bonus Authorization.** The City Council, after recommendation by the Planning Commission, may authorize an increase in allowable dwelling unit density for those residential projects that assist in meeting the lower income or senior housing needs of the community. When the Planning Commission and Council make a finding that a developer has complied with the requirements of Subsections 54.20-3 and 54.20-12 the City Council, after recommendation by the Planning Commission, may award a density increase, with the approval of the project. The applicant shall submit site and architectural plans for the project (per Section 42.04 of this Chapter) for review and approval in conjunction with the Planning Commission and City Council consideration of the Density Bonus application. The Planning Commission shall hold at least one public hearing, prior to making its recommendation to the City Council. Upon receipt of the recommendation of the Planning Commission, the City Council shall hold at least one public hearing, prior to any final action on an application. Notice of hearing shall be given in accordance with the provisions of Section 64 of this Chapter.

#### **54.20-3 Density Bonus Conditions**

- A. When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the city shall provide the applicant incentives or concessions for the production of housing units and childcare facilities as prescribed in this section.
- B. The city shall grant a density bonus and incentives or concessions described in Section 54.20-4 when the applicant for the housing development seeks and agrees to construct at least any one of the following criteria:
  - (1) Ten percent (10%) of the total units in a housing development for lower income households as defined in Section 50079.5 of the State Health and Safety Code.
  - (2) Five percent (5%) of the total units in a housing development for very low-income households as defined in Section 5015 of the State Health and Safety Code.
  - (3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the State Civil Code.
  - (4) Ten percent (10%) of the total dwelling units in a condominium project as defined in subdivision (f) or in a planned development project as defined in subdivision (k) of Section 1351 of the State Civil Code for persons and families of moderate income, as defined in Section 50093 of the State Health and Safety Code.
- C. If the housing development meets criteria (1), (2), or (3) above, the density bonus shall be an increase of 20% over the maximum allowable residential density under

the general plan and zoning ordinance. If the housing development meets criterion (4) above, the density bonus shall be an increase of 5% over the maximum allowable residential density under the general plan and zoning ordinance.

D. If at least one of the above criteria is met, an additional density bonus shall be granted as per the following sliding scale:

- (1) An additional 2.5% density bonus for each increase of 1% Very- Low Income units above the initial 5% threshold;
- (2) A density increase of 1.5% for each 1% increase in Lower-Income units above the initial 10% threshold; and
- (3) A 1% density increase for each 1% increase in Moderate-Income condominium or planned development units above the initial 10% threshold.

E. The total of the density bonuses pursuant to paragraphs C and D above shall not exceed 35% for the proposed housing development.

#### **54.20-4 Concessions and Incentives**

Any project that meets the minimum criteria specified in Section 54.20-3.B for a density bonus is entitled to concessions depending upon the amount of affordable housing provided as follows:

- (1) For projects that provide either 5% of the units affordable to Very Low-Income households, 10% of the units affordable to Low-Income households, or 10% Moderate-Income condominiums, the developer is entitled to one concession;
- (2) When the number of affordable units is increased to 10% Very Low-Income units, 20% Lower-Income units, or 20% Moderate-Income condominiums, the developer is entitled to two concessions; and
- (3) When the number of affordable units is increased to 15% Very Low-Income, 30% Low Income, or 30% Moderate-Income household condominiums, the number of concessions is increased to three concessions.

Requested concessions shall be approved unless the City makes either of the following findings in writing and based on substantial evidence.

- a. The concession is not required in order to provide for affordable housing costs as defined in State Health and Safety § 50052.2, or for rents for the affordable units pursuant to Section 54.20-13.
- b. The concession would have a specific adverse impact as defined in State Government Code § 65589.5(d)(2) upon the public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse

impact without rendering the development unaffordable to low- and moderate-income households.

#### **54.20-5 Land Donation**

A density bonus of 15% over the maximum allowable residential density under the general plan and zoning ordinance is available to projects that donate land for residential use. The land must satisfy all of the following requirements prior to granting the density bonus:

- (1) Have the appropriate general plan designation and zoning to permit construction of units affordable to Very Low-Income households in an amount not less than 10% of the units in the residential development;
- (2) Be at least one acre in size or of sufficient size to permit development of at least 40 units; and
- (3) Be served by adequate public facilities and infrastructure.

A density bonus based on land donation may be combined with the density bonus in Section 54.20-3; however, the maximum combined density bonus that can be granted is 35%. When the land is transferred, it must have all the permits and approvals necessary for the development of the Very Low-Income housing units. The land transfer shall occur prior to or concurrent with approval of the final subdivision map, parcel map, or residential development application. The land and affordable units must be subject to deed restrictions ensuring continued affordability. The city may require that the land be transferred to a developer instead of the city.

#### **54.20-6 Parking Standards**

If a project qualifies for a density bonus, the developer may request and the City must grant the following parking standards for the entire development project:

- (1) Zero to one bedroom-one on-site parking space
- (2) Two to three bedrooms-two on-site parking spaces
- (3) Four and more bedrooms- two and one-half on-site parking spaces.

These numbers are inclusive of guest parking and handicapped parking and may be tandem or uncovered but cannot be on street. The parking standards may be requested even if no density bonus is requested.

#### **54.20-7 Waivers and Modifications of Development Standards**

The City may not impose a development standard that makes it infeasible to construct the housing development with the proposed density bonus. In addition to requesting incentives and concessions, applicants may request the waiver of development standards and shall show that the waiver is necessary to make the housing units economically feasible. For the purpose of this section, development standards are defined as site or construction conditions that apply to a residential development pursuant to any local

policy, resolution or regulation. The requested waiver shall be approved unless the City makes either of the findings set forth in Section 54.20-4

**54.20-8 Determination of Maximum Allowable Densities.**

The maximum allowable density per gross acre prior to applying the density bonus shall be as specified in the Milpitas Zoning Ordinance for the applicable zoning or overlay district or PUD process, as listed in Sections 8.05-2 (R4 district), 22.04-7 (TC district), 38.05-4 (MXD district), 43.05 (TOD overlay district), and 54.07-6(c) (PUD process for R3 district) of this Chapter, and in City Council Resolution No. 3489 as amended from time to time (R1, R2 and R3 districts).

**54.20-9 Applicability.** The density bonus referred to in this Section shall apply to housing developments consisting of five or more dwelling units.

**54.20-10 Unit Type and Location.** All affordable units shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the non-affordable units in the project, and shall be comparable with the non-affordable units in terms of appearance, materials and finished quality. The Planning Commission may recommend to the City Council modifying the requirements as to unit size or type, if it is found that such a modification would better serve the affordable housing need of Milpitas.

**54.20-11 Agreement.** Prior to final building inspection and occupancy for a project containing affordable units, the applicant shall execute and record at the Santa Clara County Recorder's Office the City's Agreement Imposing Restrictions on Real Property, which Agreement shall explain the affordability requirements. The agreement shall be approved by the Milpitas City Attorney prior to recordation.

**54.20-12 Retaining Affordability.** A developer shall agree to, and the City shall insure continued affordability of, all lower or very low-income density bonus units for thirty (30) years or a longer period of time, if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If the City does not grant at least one (1) additional concession or incentive, in addition to a density bonus as specified in Subsection 54.20- 3, the developer shall agree to, and the City shall ensure continued affordability for a minimum of ten (10) years of all lower or very low income housing units receiving a density bonus.

**54.20-13 Affordable Rents.** Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty (30%) of sixty (60%) percent of the Santa Clara County median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty (30%) of fifty (50%) percent of County median income. (Ord. 38.761 (part), 5/20/03).

**54.20-14**      **Relation to statute.** Density bonus requirements not specified in these regulations shall be governed by the State Density Bonus Law, Government Code section 65915, et seq.

Section 4.      **PUBLICATION AND EFFECTIVE DATE.**

Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.

Section 5.      **SEVERABILITY**

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.